

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Monroe, Georgia Water Light and Gas
Commission d/b/a Monroe Utilities Network
v.
Morris Network, Inc., owner of
WMGT, Channel 41, Macon, Georgia
and
Morris Network, Inc., owner of
WMGT, Channel 41, Macon, Georgia
v.
Monroe, Georgia Water Light and Gas
Commission d/b/a Monroe Utilities Network
CSR No. 6237-C
CSR No. 6254-C

MEMORANDUM OPINION AND ORDER

Adopted: July 23, 2004

Released: July 27, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Pursuant to Sections 76.7 and 76.65 of the Commission's rules, the Monroe, Georgia Water Light and Gas Commission, d/b/a Monroe Utilities Network ("Monroe Utilities"), a municipally-owned cable operator serving incorporated and unincorporated portions of Walton and Morgan Counties, Georgia, has filed a retransmission consent complaint and petition for declaratory ruling ("Monroe Utilities Complaint") against Morris Network, Inc. ("Morris"), owner of television station WMGT (NBC Ch. 41), Macon, Georgia ("WMGT" or "Station"). Covington Cable TV ("Covington"), a municipally-owned and operated cable television system serving Covington, Georgia, filed comments in support of the Monroe Utilities Complaint. Morris, National Broadcasting Company, Inc. ("NBC"), and Gannett Georgia, L.P. ("Gannett"), licensee of television station WXIA-TV ("WXIA"), the NBC affiliate in Atlanta, Georgia, filed separate oppositions to the Monroe Utilities Complaint. Monroe Utilities filed a consolidated reply addressing the arguments raised by Morris, NBC, and Gannett.

2. Approximately two months after the Monroe Utilities Complaint was filed, Morris filed a separate retransmission consent complaint against Monroe Utilities ("Morris Complaint") pursuant to

Sections 76.6, 76.7, and 76.64 of the Commission's rules. Monroe Utilities filed an answer to the Morris Complaint. Morris subsequently filed a request for expedited Commission action on the Morris Complaint, Monroe Utilities filed a reply to the request, and Morris filed a reply to the reply.

3. We will address herein both the Monroe Utilities Complaint and the Morris Complaint because the underlying facts are identical and the issues raised by the parties are substantially similar. For the reasons stated below, we grant the Monroe Utilities Complaint in part and dismiss the Morris Complaint.

II. DISCUSSION

4. Monroe Utilities states that it approached WMGT to request retransmission consent after it was unable to reach a retransmission consent agreement with WXIA.¹ WXIA is located in the Atlanta Designated Market Area ("Atlanta DMA"), which is the same market in which the Walton and Morgan County customers served by Monroe Utilities are located.² WMGT, also an NBC affiliate, is located in the Macon Designated Market Area ("Macon DMA"). According to Monroe Utilities, on June 26, 2003, Monroe Utilities and WMGT executed a retransmission consent agreement ("Monroe Utilities/WMG T Agreement") that covers carriage of the Station's analog and digital signals on the Monroe Utilities cable system serving Monroe, Social Circle, Good Hope, Bostwick, and other areas in Walton and Morgan counties for the period of July 1, 2003 through December 31, 2005.³ On July 17, 2003, WMGT informed Monroe Utilities by letter that WMGT did not have the right under its network affiliation agreement with NBC ("WMGT/NBC Agreement") to grant retransmission consent to Monroe Utilities. Specifically, WMGT maintained that the WMGT/NBC Agreement prohibits WMGT from entering into a retransmission consent agreement with any cable system or other multichannel video program distributor ("MVPD") located outside the Macon DMA.⁴ Monroe Utilities states that since July 17, 2003, Morris has repeatedly attempted to retract the Monroe Utilities/WMG T Agreement.⁵ Monroe Utilities argues that Morris violated the good faith negotiation requirement of Section 325(b)(3)(C)(ii) of the Communications Act, as amended ("Act"), by executing the WMGT/NBC Agreement.⁶ Monroe Utilities further argues that the WMGT/NBC Agreement contravenes the Commission's network non-duplication rules by providing exclusivity protection beyond the geographic scope of the rules.⁷ Monroe Utilities seeks a

¹Monroe Utilities Complaint at 2.

²*Id.*

³*Id.* at 2, Exhibit C.

⁴*Id.* at 3, Exhibit D. The letter states, in pertinent part, that WMGT "has been informed by NBC that this station is not contracted to air its signal on your system which is in the Atlanta market." Section 17 of the WMGT/NBC Agreement provides that WMGT "shall not grant consent to the retransmission of its broadcast signal by any cable television system . . . if such cable system or MVPD is located outside the ADI to which Station is assigned . . ." Monroe states that the entire Monroe Utilities cable system is located outside the Macon DMA, the Station's area of dominant influence ("ADI"). See Monroe Utilities Complaint at 4.

⁵*Id.* at 4.

⁶*Id.* at 5-6. Section 325(b)(3)(C)(ii) directs the Commission to revise its regulations so that they shall "until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from . . . failing to negotiate in good faith." 47 U.S.C. § 325(b)(3)(C)(ii). See 47 C.F.R. § 76.65.

⁷Monroe Utilities Complaint at 6-8. Section 76.92 of the Commission's rules provides that, upon the request of a local television station with exclusive rights to distribute a network program, a cable operator generally may not carry a duplicating network program broadcast by a distant station. 47 C.F.R. § 76.92. However, under Section (continued...)

ruling declaring that the WMGT/NBC affiliation agreement is contrary to the Commission's good faith negotiation rules and requiring WMGT to honor the Monroe Utilities/WMGAT Agreement.⁸

5. In opposition, Morris asserts that it has not granted retransmission consent to Monroe Utilities because it is not permitted to grant such consent under the WMGT/NBC Agreement, and it cannot grant rights that it does not have.⁹ Morris argues that the good faith negotiation requirement of Section 325(b)(3)(C)(ii) does not apply to an agreement, such as the WMGT/NBC Agreement, which was not executed in the context of retransmission consent negotiations.¹⁰ In any case, Morris claims, the WMGT/NBC Agreement does not violate the good faith negotiation requirement.¹¹ Morris adds that its retraction of the grant of consent was done honestly and does not negate the original intention of Morris to negotiate and grant retransmission rights in good faith.¹² Morris also argues that the WMGT/NBC Agreement does not violate the network non-duplication rules because the rules are not triggered in this case, either substantively or procedurally.¹³

6. NBC and Gannett also filed oppositions to the Monroe Utilities Complaint. NBC asserts that Monroe Utilities' arguments regarding the good faith negotiation requirement and the network non-duplication rules are unfounded and misguided, and that a decision in favor of Monroe Utilities would undermine the critical premise of a network-affiliate system, *i.e.*, that a network has a right to limit retransmission of its programming to other potential markets for that programming.¹⁴ Gannett argues that under the terms of the WMGT/NBC Agreement, Morris cannot grant Monroe Utilities retransmission consent rights within the Atlanta DMA.¹⁵ In addition, Gannett asserts that the WMGT/NBC Agreement is not inconsistent with the Commission's network non-duplication rules and that the facts do not support a finding that Morris negotiated with Monroe Utilities in bad faith.¹⁶ In support of the Monroe Utilities Complaint, Covington asserts that the language of the Monroe Utilities/WMGAT Agreement is clear and should be honored by WMGT.¹⁷

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76.92(f), an otherwise distant station is exempt from the application of the network nonduplication rules if it is considered "significantly viewed" in the relevant community. 47 C.F.R. §§ 76.5(i), 76.54. In addition, pursuant to the Commission's cable television syndicated programming exclusivity rules, a cable system may not import duplicating syndicated programming that has been purchased by a local station on an exclusive basis. *See* 47 C.F.R. §§ 76.92, 76.101. In both situations, the Commission's rules generally provide stations such protection within a station's 35-mile geographic zone. The 35-mile geographic zone extends from the reference point of the community of license of the television station. *See* 47 C.F.R. §§ 73.658(m), 76.53.

⁸Monroe Utilities Complaint at 9.

⁹Morris Opposition at 3.

¹⁰*Id.* at 4-6.

¹¹*Id.* at 6-7.

¹²*Id.* at 8.

¹³*Id.* at 9.

¹⁴NBC Opposition at 3-8.

¹⁵Gannett Opposition at 3.

¹⁶*Id.* at 4-5.

¹⁷Covington Opposition at 2.

7. In the Morris Complaint, Morris alleges that Monroe Utilities is retransmitting the signal of WMGT without consent in violation of Section 325(b)(1) of the Act and Section 76.64 of the Commission's rules.¹⁸ Morris states that, under the WMGT/NBC Agreement, Morris may only grant retransmission consent to cable systems for distribution within the Macon DMA.¹⁹ Morris further states that the Monroe Utilities/WMGMT Agreement "would have offered Monroe [Utilities] retransmission consent but for the extant [network] affiliation agreement" between WMGT and NBC.²⁰ According to Morris, on September 29, 2003, Monroe Utilities commenced retransmission of WMGT to Monroe Utilities subscribers located in the Atlanta DMA, despite repeated warnings from Morris that Monroe Utilities did not have consent to retransmit WMGT.²¹ Morris seeks a ruling ordering Monroe Utilities to cease retransmission of the WMGT signal in the Atlanta DMA and imposing a monetary forfeiture against Monroe Utilities for retransmitting WMGT without consent.²²

8. We find that Morris has granted express authority under Section 325(b)(1) for the retransmission of the Station's signal on the Monroe Utilities cable system serving Monroe, Social Circle, Good Hope, Bostwick, and other areas in Walton and Morgan counties for the period of July 1, 2003 through December 31, 2005. The record clearly indicates that on June 26, 2003, WMGT executed an agreement granting retransmission consent for carriage of the Station's analog and digital signals on the Monroe Utilities cable system. As Morris itself states, "the Station not only sincerely intended to reach an agreement with Monroe [Utilities], it actually executed one."²³

9. Our specific role under Section 325(b)(1) is to determine whether a broadcast station has granted its express authority for the retransmission of its signal. Because we find that Morris has granted retransmission consent to Monroe Utilities under Section 325(b)(1), we need not reach the question of Morris's alleged violation of the good faith negotiation requirement or the network non-duplication rules.²⁴ With respect to these issues, we dismiss the Monroe Utilities Complaint without prejudice.

¹⁸Morris Complaint at 1.

¹⁹*Id.* at 1-2.

²⁰*Id.* at 2.

²¹*Id.*

²²*Id.* at 7.

²³Morris Opposition at 8.

²⁴The purpose of the good faith negotiation requirement is to ensure that broadcasters and MVPDs meet to negotiate retransmission consent and that such negotiations are conducted in an atmosphere that does not unreasonably prevent an MVPD from obtaining retransmission consent. *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, 15 FCC Rcd 5445 (2000). Accordingly, where we determine, as in the instant case, that a broadcaster has granted express authority for retransmission of its signal under Section 325(b)(1), and the MVPD does not dispute the substance of the agreement, we need not reach the question of whether the broadcaster has acted in good faith during the course of the negotiations. Nevertheless, we caution broadcasters to be aware of existing contractual obligations that affect a television station's ability to negotiate a retransmission consent agreement in good faith. The statute appears to apply equally to stations and MVPDs in the same local market or in different local markets. To the extent, however, that Monroe Utilities is arguing that the existence of an underlying agreement between Morris and NBC is itself a violation of the good faith negotiation requirement, we agree with Morris that the good faith requirement applies to negotiations between MVPDs and broadcast stations, and not between a network and an affiliate.

10. Our decision here is not intended to suggest any opinion as to whether Morris's grant of retransmission consent for WMGT is consistent with any contractual agreement to which it may be a party. We will not interject ourselves into specific arguments concerning private agreements between broadcasters and MVPDs.²⁵ Contractual issues are to be resolved by the parties or by courts of proper jurisdiction.

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, that the complaint filed by Monroe, Georgia Water Light and Gas Commission **IS GRANTED**, to the extent indicated above.

12. **IT IS FURTHER ORDERED**, that the complaint filed by WMGT, NBC Ch. 41 **IS DISMISSED**.

13. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
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²⁵See, e.g., *Telefutura Fresno LLC v. Echostar Communications Corp., Request for Carriage of Station KTFF(TV), Porterville, CA*, 18 FCC Rcd 22940 (MB 2003), App. for Review pending; *NBC Subsidiary (NH), Inc. v. Echostar Communications Corp., Request for Carriage of Station WNEU(TV), Merrimack, New Hampshire*, 18 FCC Rcd 15238 (MB 2003), App. for Review pending.

²⁶47 C.F.R. § 0.283.